



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

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Docket No: 7922-22
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of your naval record and your application, the Board for Correction of Naval Records (Board) found the evidence submitted insufficient to establish the existence of probable material error or injustice. Consequently, your application has been denied.

Although your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 21 November 2022. The names and votes of the panel members will be furnished upon request. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application together with all material submitted in support thereof, relevant portions of your naval record, and applicable statutes, regulations, and policies, to include the 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice, or clemency determinations (Wilkie Memo).

You enlisted in the United States Marine Corps and commenced a period of active duty on 19 Apr 1979. On 12 December 1980, you began a three-day period of unauthorized absence (UA). On 19 December 1980, you began another period of UA, this time for a period of thirty days, and were declared a deserter. On 29 March 1981, you received non-judicial punishment (NJP) for violating Uniform Code of Military Justice (UCMJ) Article 112(a), for those two periods of UA. You did not appeal your NJP.

On 24 September 1981, you were found guilty at Summary Court Martial for violating UCMJ Article 86, for failure to go to your appointed place of duty and Article 91, for three incidents of using disrespectful language towards senior non-commissioned officers (NCOs). You were sentenced to 30 days confinement, reduction in rank to E-2, and forfeitures of pay. On 23 December 1981, you were again found guilty at Summary Court Martial, this time for violating UCMJ Article 86, for failure to go to your appointed place of duty on two occasions, Article 89, for using disrespectful language towards an officer, Article 91, for two incidents of using disrespectful language towards NCOs, and Article 92, for failing to obey a lawful order by having

a female in male berthing. You were sentenced to 30 days confinement, reduction in rank to E-1, and forfeitures of pay.

On 20 January 1982, while stationed at ██████████, you received medical treatment for Ulnar Nerve Damage/Lacerated Hand. You received follow-up treatment for this medical issue on 11 April 1982.

On 5 April 1982, you received your second NJP for violating UCMJ Article 86, for failure to go to your appointed place of duty on two occasions. You did not appeal this NJP. Ultimately, on 24 May 1982, you were discharged from the Marine Corps at the completion of your required active service period. Due to your record of misconduct, you were assigned a General (GEN) characterization of service and a RE- 4 reentry code.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Wilkie Memo. These included, but were not limited to your desire to upgrade your discharge characterization and your contention that you lost the use of your right hand during service. For purposes of clemency and equity consideration, the Board noted that you provided documentation from the Department of Veterans Affairs confirming your 70% disability rating due to your service connected disability.

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your two Summary Courts Martial and two NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it involved numerous periods of UA and instances of insubordination. Further, the Board also considered the likely negative impact your conduct had on the good order and discipline of your command. While the Board considered your disability condition, they concluded that it had no bearing on your misconduct and resulting your characterization of service. As a result, the Board concluded significant negative aspects of your active service outweighed the positive aspects and continues to warrant a GEN characterization. Even in light of the Wilkie Memo and reviewing the record holistically, the Board did not find evidence of an error or injustice that warrants upgrading your characterization of service or granting an upgraded characterization of service as a matter of clemency or equity. Accordingly, given the totality of the circumstances, the Board determined your request does not merit relief.

You are entitled to have the Board reconsider its decision upon submission of new matters, which will require you to complete and submit a new DD Form 149. New matters are those not previously presented to or considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when

applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

12/7/2022

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Executive Director

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